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CENTRAL FAX CENTER****OCT 31 2007****IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Application No. : 10/645,079
Inventor(s) : Erik John Hasenoehrl
Filed : August 21, 2003
Art Unit : 1615
Examiner : Hasan Syed Ahmed
Docket No. : 9343
Confirmation No. : 6936
Customer No. : 27752
Title : Effervescent Personal Cleansing Articles

APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

This Brief is filed pursuant to the appeal from the decision communicated in the Office Action mailed on February 8, 2007.

A Notice of Appeal is being submitted together with this brief.

REAL PARTY IN INTEREST

The real party in interest is The Procter & Gamble Company of Cincinnati, Ohio.

RELATED APPEALS AND INTERFERENCES

There are no known related appeals, interferences, or judicial proceedings.

STATUS OF CLAIMS

Claims 1 and 3-25 are pending in the present application. Claims 14-25 were withdrawn in response to a restriction requirement. Claims 1 and 3-13 are rejected. Claims 1 and 3-13 are appealed. A complete copy of the appealed claims is set forth in the Claims Appendix attached herein.

STATUS OF AMENDMENTS

Amendment was filed on November 17, 2006; this amendment was entered.

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SUMMARY OF CLAIMED SUBJECT MATTER

The present invention relates to an article for cleansing body surfaces (page 3, line 10). The article comprises an effervescent composition comprising solid alkaline and acidic materials (page 3, lines 11-15; page 7, line 33 to page 8, line 31) and a liquid-permeable laminate (page 3, lines 11-15; page 4, line 11 to page 7, line 32). The liquid-permeable laminate of the present invention comprises a plurality of layers (page 4, line 11 to page 7, line 32). The liquid-permeable laminate has a first layer that comprises a web (page 4, line 11 to page 7, line 32; page 6, 19-29) and a second layer, in contact with the first layer, that comprises a plurality of webs (page 4, line 11 to page 7, line 32; page 6, line 30 to page 7, line 32). The effervescent composition is present between the webs that comprise the second layer (page 4, line 11 to page 7, line 32). The web of the first layer comprises a lathering surfactant distributed over the first layer on the surface of the layer's web opposite the contact surfaces of the first layer and the second layer (page 11, line 8 to line 10).

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Are claims 1-5 and 10-13 obvious over the combination of Slavtcheff, et al. (U.S. Patent No. 6,451,331) (hereinafter referred to as "Slavtcheff") in view of Bries, et al. (U.S. Patent No. 5,110,843) (hereinafter referred to as "Bries")?

ARGUMENTS

Claims 1-5 and 10-13 are not obvious over Slavtcheff in view of Bries

Claims 1-5 and 10-13 have been rejected under 35 USC §103(a) as being obvious over Slavtcheff in view of Bries. The Office Action states that Slavtcheff discloses a layered effervescent article for cleansing body surfaces. The Office Action states Slavtcheff' article comprises a effervescent composition comprising solid alkaline and acidic materials of the instant claim 1 and a liquid-permeable laminate that comprises a first web layer and a second web layer with an effervescent composition between the first layer and the second layer. The Office Action states Slavtcheff's article may further comprise an anionic lathering surfactant. The Office action of Slavtcheff explains that combining the disclosed agents into one cleaning article is beneficial because it forms a convenient delivery package. The Office Action admits that Slavtcheff does not teach a

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surfactant layer distributed over the first web layer. The Office Action states that Bries teaches a cleansing article that comprises multiple layers. The Office action states that the Bries article may contain cleaner or detergent. The Office action states that it would have obvious to a person of ordinary skill in the art at the time the invention was made to add surfactant to the top of a multi-layer personal cleansing article. The Office Action states that one of ordinary skill in the art would have been motivated to add surfactant to the cleansing article because it forms a convenient delivery package, as explained by Slavtcheff.

The Appellants respectfully traverse the rejection.

The present invention relates to an article for cleansing body surfaces. The article comprises an effervescent composition comprising solid alkaline and acidic materials and a liquid-permeable laminate. The liquid-permeable laminate of the present invention comprises a plurality of layers. The liquid-permeable laminate has a first layer that comprises a web and a second layer, in contact with the first layer, that comprises a plurality of webs. The effervescent composition is present between the webs that comprise the second layer. The web of the first layer comprises a lathering surfactant distributed over the first layer on the surface of the layer's web opposite the contact surfaces of the first layer and the second layer.

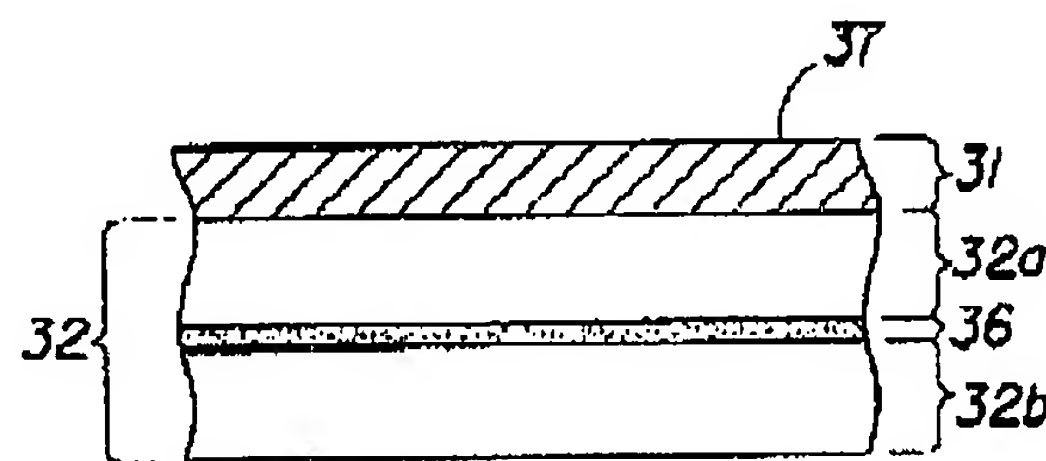


Fig. 3

As shown in FIGURE 3, the first layer 31 is in communication over its entire surface with the top surface of a second layer 32. In FIGURE 3, the surfactants 37 are primarily located on the first layer on the surface of the web opposite the contacting surfaces of the first and second layers of the laminate. Embodiment as illustrated in

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FIGURE 3 is one wherein the second layer 32 comprises two webs 32a and 32b, wherein the effervescent composition 36 is placed between webs 32a and 32b.

By placing the effervescing composition between the webs of the second layer, the effervescent composition does not agglomeration and/or cake, thereby the effervescent composition remains evenly spread over the web surface to throughout the laminate and facilitates consistent and steady activity of the article when wetted. Accordingly, it was an object of the present invention is to eliminate the dry flowing powders from the gas generating chemistry which inhibit optimum foaming and lathering. To achieve this, the surfactant is placed in a position other than with the gas generating chemistry so that the aggregating or caking of the gas generating chemistry does not inhibit the generation of gas and transfer of water to surfactants so that there is optimum foaming. Thus, the lathering surfactant and the effervescent composition are in separate locations within the cleansing article.

Slavtcheff in view of Bries does not teach or suggest all of the claim limitations of Claims 1-5 and 10-13 and, therefore, does not establish a *prima facie* case of obviousness (See MPEP 2143.03). Specifically, Slavtcheff in view of Bries does not teach or suggest a cleansing article that comprises an effervescent composition and a lathering surfactant which are in separate locations within the cleansing article. Slavtcheff teaches "a swiping article which includes an effervescent cleanser composition held within a sachet" (See Slavtcheff, abstract). The surfactant and the effervescent composition in the article of Slavtcheff are positioned together within the sachet (See Slavtcheff column 4, 15-17 and 65-67, Examples 1-6, and Claims 1 and 5). Bries teaches articles multilayered polyurethane foam having a detergent or cleaner impregnated in an inner layer (See Bries, column 5, lines 49-52). Bries does not teach another composition, such as an effervescent composition, in addition to the detergent or cleaner in a separate location within the article.

Further, there is no suggestion in Slavtcheff or Bries to modify the cleansing article of Slavtcheff to have two compositions in separate areas of the cleansing article. Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or

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motivation to do so, *In re Kahn*, 441 F.3d 977, 986, 78 USPQ2d 1329, 1335 (Fed. Cir. 2006). Furthermore, the teaching or suggestion to make the claimed combination must be found in the prior art, not in applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). One of skill in the art would not be motivated to make a cleansing article that comprises an effervescent composition and a lathering surfactant which are in separate locations within the article by reading the disclosures of Slavtcheff and Bries. Slavtcheff does not teach or suggest an article for cleansing body surfaces that comprises an effervescent composition and a lathering surfactant which are in separate locations within the article. Slavtcheff teaches "a swiping article which includes an effervescent cleanser composition held within a sachet" (See Slavtcheff, abstract). The surfactant and the effervescent composition in the article of Slavtcheff are positioned together within the sachet (See Slavtcheff column 4, 15-17 and 65-67, Examples 1-6, and Claims 1 and 5). Bries teaches articles multilayered polyurethane foam having a detergent or cleaner impregnated in an inner layer (See Bries, column 5, lines 49-52). Bries does not teach another composition, such as an effervescent composition, in addition to the detergent or cleaner in a separate location within the article. Thus, one of ordinary skill in the art would not be motivated by Bries to separate the surfactant and effervescent composition of Slavtcheff, because Bries does not teach an article that comprises two compositions in separate locations within an article. The motivation to modify Slavtcheff disclosure can be found in the Appellants disclosure using hindsight.

SUMMARY

In view of all of the above, the Appellants respectfully submit that the claimed invention is unobvious. The Appellants respectfully request that the rejections of record be withdrawn.

Respectfully submitted,

THE PROCTER & GAMBLE COMPANY



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CLAIMS APPENDIX

Claim 1. (Rejected) An article for cleansing body surfaces, the article comprising:

a) an effervescent composition comprising solid alkaline and acidic materials;
and

b) a liquid-permeable laminate comprising a plurality of layers, said laminate having a first layer comprising a web and a second layer, in contact with said first layer, comprising a plurality of webs wherein said effervescent composition is present between the webs comprising said second layer;

wherein said web of said first layer comprises a lathering surfactant distributed over said first layer on the surface of said layer's web opposite the contact surfaces of said first layer and said second layer.

Claim 2. (Canceled)

Claim 3. (Rejected) The article of claim 1 where the lathering surfactant is selected from the group consisting of anionic lathering surfactants, nonionic lather surfactants, amphoteric lathering surfactants and mixtures thereof.

Claim 4. (Rejected) The article of claim 3 wherein said article comprises from about 0.01% to 1500%, by weight of said laminate, of said lathering surfactant.

Claim 5. (Rejected) The article of claim 4 wherein the anionic lathering surfactants are selected from the group consisting of sarcosinates, sulfates, isethionates, taurates, phosphates, lactylates, glutamates, and mixtures thereof.

Claim 6. (Rejected) The article of claim 5 wherein said second layer's webs are affixed to one another at the contacting surfaces of the webs by attachment means selected from the group consisting of bonding agents, sonic welding, heat fusing, mechanical compression and combinations thereof.

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Claim 7. (Rejected) The article of claim 6 wherein said bonding agents are selected from the group consisting of polyethylene glycol, polyethylene and mixtures thereof.

Claim 8. (Rejected) The article of claim 7 wherein said article has a third layer attached to said second layer at the surface of said second layer opposite the contacting surface of said first layer and said second layer.

Claim 9. (Rejected) The article of claim 8 wherein the article's layers are bonded together about the perimeter of said article.

Claim 10. (Rejected) The article of claim 9 wherein said effervescing composition is dry and comprises from about 1 to about 80% of the total weight of the effervescing composition an alkaline material selected from the group consisting of anhydrous salts of carbonates and bicarbonates; alkaline peroxides and azides and mixtures thereof.

Claim 11. (Rejected) The article of claim 10 wherein said alkaline material is selected from the group consisting sodium bicarbonate, potassium bicarbonate, sodium carbonate, potassium carbonate and mixtures thereof.

Claim 12. (Rejected) The article of claim 11 wherein said effervescing composition comprises from about 0.5% to about 80% of the total weight of the effervescing composition an acidic material is selected from the group consisting of C₂ to C₂₀ organic mono- and poly-carboxylic acids; C₂ to C₂₀ organophosphorus acids; C₂ to C₂₀ organosulfur acids, toluene sulfonic acid; peroxides, lactones and mixtures thereof.

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Claim 13. (Rejected) The article of claim 12 wherein said carboxylic acids are selected from the group consisting of adipic, glutaric, succinic, tartaric, malic, maleic, lactic, salicylic, citric acids and mixtures thereof.

Claim 14. (Withdrawn) An article for cleansing body surfaces, the article comprising:

- a) an effervescent composition comprising solid alkaline and acidic materials;
and
- b) a liquid-permeable laminate comprising a plurality of layers, said laminate's first layer comprising a web and a second layer in contact with said first layer, wherein said second layer comprises a two webs wherein said effervescent composition is provided to the contacting surfaces of said webs comprising said second layer; and
- c) a third layer contacting said second layer at the surface of said second layer opposite that contacting the surface of said first layer.

Claim 15. (Withdrawn) The cosmetic article of claim 14 wherein said web of said first layer comprises a lathering surfactant distributed over said first layer on the surface of said layer's web opposite the contact surfaces of said first layer and said second layer.

Claim 16. (Withdrawn) The cosmetic article of claim 15 further comprising a skin treatment agent at a level from about 0.001 to about 30% by weight of the article, said skin treatment agent located on the surface of said third layer opposite said surface contacting said second layer.

Claim 17. (Withdrawn) The cosmetic article of claim 16 wherein said skin treatment agent is selected from the group consisting of conditioning component, vitamins, zeolites, peptides, sunscreen actives, terpene alcohols, desquamation actives, anti-acne actives, anti-wrinkle actives, anti-atrophy actives, anti-oxidants, flavanoids, anti-inflammatory agents, anti-cellulite agents, topical anesthetics, tanning actives,

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chelators, skin lightening agents, antimicrobial actives, anti-fungal actives, skin soothing actives, skin healing actives, skin moisturizing actives, cosmetic actives and mixtures thereof.

Claim 18. (Withdrawn) The cosmetic article of claim 17 further comprising from about 0.010% to about 35% by weight of an emollient.

Claim 19. (Withdrawn) The cosmetic article of claim 18 wherein said emollients are selected from the group consisting of natural or synthetic esters, silicone oils, hydrocarbons, starches, fatty acids, triglycerides, waxes and mixtures thereof.

Claim 20. (Withdrawn) The cosmetic article of claim 19 wherein said third layer has a lathering surfactant upon its surface opposite its surface contacting said second layer.

Claim 21. (Withdrawn) An article for cleansing body surfaces, the article comprising:

- a) an effervescent composition comprising solid alkaline and acidic materials; and
- b) a liquid-permeable laminate comprising a plurality of layers, said laminate having a first layer comprising a web and a second layer in contact with said first layer, wherein said second layer comprises two webs wherein said effervescent composition is present between said first and second web of said second layer;
- c) a third layer contacting said second layer at the surface of said second layer opposite that contacting said first layer; and
- d) a fourth layer contacting said third layer at the surface of said third layer opposite that contacting the second layer wherein said fourth layer comprises a high loft batting material.

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Claim 22. (Withdrawn) The cosmetic article of claim 21 wherein said web of said first layer comprises a lathering surfactant distributed over said first layer on the surface of said layer's web opposite the contact surfaces of said first layer and said second layer, and distributed over said third layer on the surface of said layer's web opposite the contact surfaces of said second layer and said third layer.

Claim 23. (Withdrawn) The cosmetic article of claim 21 wherein said fourth layer has a lathering surfactant over the surface of said high loft batting material.

Claim 24. (Withdrawn) A kit for the use of cosmetic article for cleansing body surfaces, said kit comprising:

- a) an effervescent composition comprising solid alkaline and acidic materials;
- b) a cleansing article comprising a liquid-permeable laminate comprising a plurality of layers, said laminate's first layer comprising a web and a second layer in contact with said first layer, wherein said second layer comprises two webs wherein said effervescent composition is provided on to the contacting surface of said webs comprising said second layer; and
- c) a package for storage of a plurality of said cleansing articles, said package having a removable seal and a closure, wherein upon opening the closure and removing the seal, a desired number of cleansing articles are removed from said package wherein the closure is closed to store the remaining non-selected articles in the package.

Claim 25. (Withdrawn) The kit according to claim 24 wherein the package comprises a hinged closure and said package comprises vents to allow escape of any residual gas from within the sealed package.

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EVIDENCE APPENDIX

None

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RELATED PROCEEDINGS APPENDIX

None